**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 3168 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
**AND**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SAMIRKUMAR KARNABHAI PAREDI - Appellant(s)**
**Versus**
**PARSHOTTAM TAPUBHAI MODHVADIYA & 2 - Defendant(s)**

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**Appearance :**
MR BHARAT V SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**
**and**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 14/02/2007**
**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

This appeal is directed against the judgment and order dated 1.7.2006 of the Motor Accident Claims

Tribunal, Junagadh in MAC Petition No. 395 of 1997 by which the Tribunal dismissed the appellant's claim petition for compensation under Section 166 of the Motor Vehicles Act, 1988.

2. On 11.2.1997, the appellant and his nephew were travelling on a Hero Honda motor cycle. The motor cycle met with an accident with the matador driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3 – Insurance Company. The appellant sustained injuries resulting into a fracture which also required surgery. The appellant filed claim petition for compensation of Rs.1,50,000/-. An application was also filed under Section 140 of the Act for interim compensation and the Tribunal allowed the said application and awarded Rs.25,000/- as compensation under the No Fault principle as embodied in Section 140 of the Act. Thereafter the claim petition under Section 166 of the Act was tried on merits. The Tribunal held that the appellant failed to prove that the accident was caused by rash and negligent driving by the matador driver and that it was the appellant motor cyclist himself who was responsible for the accident. In view of that finding, the Tribunal dismissed the claim petition, but while doing so, the Tribunal further directed the appellant – claimant to refund the amount of compensation received by him under Section 140 of the Act.

3. Though served, none appears for the respondents.

4. Mr BV Shah for the appellant claimant states that the appellant is really aggrieved by the direction of the Tribunal requiring him to refund the amount of interim compensation under Section 140 of the Act and that the appellant is not interested in claiming any further compensation under Section 166 of the Act.

5. Having gone through the judgment under appeal, we find that the impugned direction given by the Tribunal proceeds on a misconception of law that the compensation under Section 140 of the Act is in the nature of interim compensation which would be required to be refunded upon failure of the claimant to prove the negligence at the trial of the claim petition under Section 166 of the Act. A Full Bench of this Court has recently held in United Insurance Insurance Co. Ltd. vs. Kadviben Udabhai Rathwa, 2006 (2) GLR 1257 that once the compensation is awarded under Section 140 of the Act upon a finding that the claimant suffered permanent disablement, total or partial, on account of the injuries sustained in an accident arising from the use of a motor vehicle, such amount is not required to be refunded by the claimant even if the claim petition under Section 166 is dismissed upon failure of the claimant to prove the negligence of the opponents. The Full Bench has held that it is only where the final compensation

awarded under Section 166 of the Act is higher or equal to the amount of compensation under Section 140 of the Act that the question of adjustment will arise.

6. In view of the above settled legal position, we have no hesitation in setting aside the impugned direction of the Tribunal. We accordingly set aside the direction of the Tribunal requiring the appellant-claimant to refund the amount of compensation earlier received by the appellant–claimant under Section 140 of the Act. We further record the statement being made by learned Advocate Mr Shah that the appellant-claimant is not interested in prosecuting his challenge to the award in so far as the Tribunal has held that the appellant–claimant failed to prove the negligence of the opponents.

7. The appeal is accordingly disposed of in the aforesaid terms.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-